Ethics Training
2011

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Goals

- Goals of this training:
  - To look at the ethics of the Government as an organization,
  - To view what it means to be public servant,
  - To be able to identify potential ethical issues, and
  - Know where to get help

Overview

- Ethics Rules
- Conflicts of Interest
- Army Conferences
- Contractors in the workplace

- https://www.fdm.army.mil/PM_Reference_Docs/2011EthicsTraining.ppt.

What principles should guide us as Government Employees?

Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

5 C.F.R. § 2635.101(b)(1)

Barely a quarter of Americans (25 percent) say they can trust the government in Washington "to do the right thing most or almost all of the time" (CNN/Opinion Research Corporation Poll. Sept. 1-2, 2010).

Among federal workers, over 44 percent either disagree or are not sure that "my organization's leaders maintain high standards of honesty and integrity" (Federal Employee Viewpoint Survey, 2010).

Terry Newell, Needed: A New Approach to Ethics in Government , http://www.huffingtonpost.com/terry-newell/needed-a-new-approach-to-_b_844070.html

National Government Ethics Survey Shows Employee Misconduct is High

More than one-third of government employees believe government does not demonstrate its values through socially responsible decision-making.

- Six in 10 government employees saw at least one form of misconduct in the last 12 months.
- One in 4 employees work in an environment conducive to misconduct
  - strong pressure to compromise standards,
  - a presence of situations which invite wrongdoing,
  - a culture where employees' personal values conflict with their values at work.
- Overall strength of ethical cultures is declining.
- Almost one-third of employees do not report misconduct.

3 Major Elements

- **Ethics**

- **Complianc**

- **Enforcement**

Applicable Law And Regulations

All federal employees should be familiar with statutory and regulatory prohibitions:

- Code of Ethics – 14 Principles
- Standards of Ethical Conduct for Executive Branch Employees 5 C.F.R. Part 2635
- The Joint Ethics Regulation (JER), DoD 5500.7-R.
- 18 United States Code Sections 201, 203, 205, 207, 208, 209.

Applicable Law and Regulations continued:

- Emoluments
  - Military retirees must request approval from the Secretary of the Army and the Secretary of State if receive compensation from a foreign government
- Procurement Integrity/FAR
- Travel Regs
  - Minimum number of attendees

Conflicts of Interest

Impermissible vs. Permissible Conduct

Thumbs Down

Thumbs Up

Basic Principles

- Avoid conflicts between personal interests and your official duties
  - This includes interests imputed to you
- Don’t misuse public office for private gain
- No preferential treatment
- Government resources on[illegible] authorized purposes

18 U.S.C. § 208

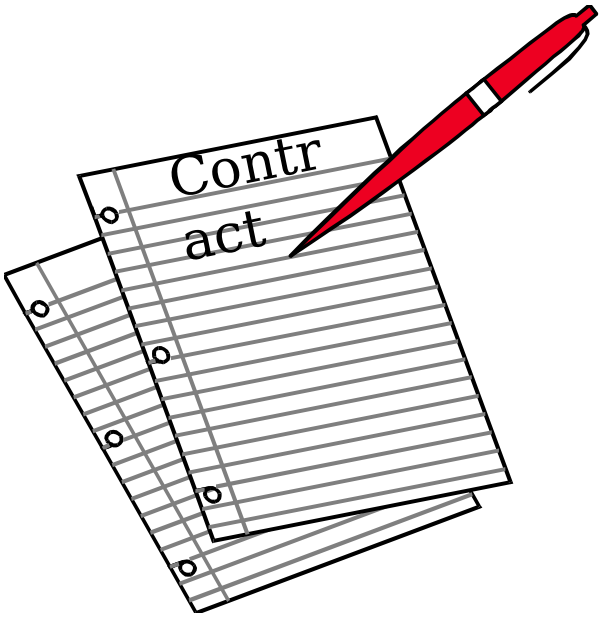
Basic Conflict of Interest Rule

- You may not work for the Government on a particular matter that will affect your financial interest and those imputed to you.
- Imputed Interests
  - Spouse
  - Minor Child
  - General Partner
  - Organization in which you serve as officer, director, trustee, general partner or employee
  - Any person or organization with whom you are negotiating or have any arrangement concerning prospective employment

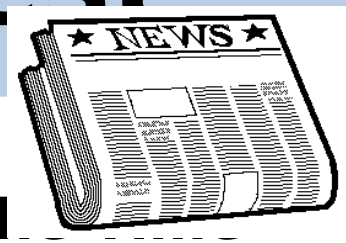
"Particular Matter"

5 C.F.R. 2640.103(a)(1)

- Something that involves deliberation, decision, or action, and a matter in controversy
- That is focused on the interests of specific persons, or a discrete and identifiable class of persons
- Examples:
  - Contract
  - Claim
  - Application
  - Something in controversy
  - Regulations pertaining to a Particular industry



Conflicts of Interest



- **"Darpa: We Have Conflicts of Interest *All* tl**

  As has been reported, Darpa Director [] is owed $250,000 by her family firm, the explosives-detection company RedXDefense, which has won $1.7 million worth of contracts with the agency since Dugan took over July 2009. Darpa says the relationship is on the up and up because [the Director] has recused herself from any business dealings with RedXDefense.

By Spencer Ackerman and Noah Shachtman
http://www.wired.com/dangerroom/2011/04/darpa-we-have-conflicts-of-interest-all-the-time/ (April 4, 2011) |

Spouse

United States v. Selb

- FACTS:

- Jane Selby, a former official of the Bonneville Power Administration ("BPA"), was convicted of criminal conflicts of interest law, 18 U.S.C. § 208.

- Jane Selby held a significant administrative position at the BPA, a federal agency which produces and transmits power throughout the Pacific Northwest. Her supervisor assigned Selby to a special detail to determine why various information technology projects were behind schedule and over budget, and to work alongside other managers to help complete the projects.

- Knowmadic, Inc, a software company wanted to expand its business with BPA. Selby had approached Knowmadic's Vice President about hiring her husband, telling him that her husband was "very computer literate and savvy. And that he had been unemployed for quite a long time, and was looking for a job." Knowmadic then hired him and assigned him to the BPA account to work on-site at BPA's office. The husband received salary and commissions on sales.

- Prior to Selby being detailed, Knowmadic was awarded a contract. Selby was not involved in the procurement, but she subsequently promoted extensive additional use of Knowmadic's software and participated in the decision-making process to implement further use of Knowmadic's products.

Thumbs Down

Result

- Selby's arguments:
  - Selby argued her participation was "post-procurement" and BPA had already committed itself to contracting with Knowmadic.
  - She was only involved in the implementation phase and not with the ASCI project which occurred "post-procurement"
- Court the rejected these arguments:
  - Scope of 18 U.S.C. § 208 includes acts which lead up to the formation of the contract as well as those which might be performed in the execution of the contract.
  - *Not limited to decision, approval, recommendation, advice, but includes acts that "otherwise" cause a conflict.*
  - Noted her participation in internal discussions to expand the scope of work to be done by Knowmadic.
  - Noted her actions to urge co-workers to recommend expansion of the contract and her influence in the decision-making process, although she lacked official decision-making authority.

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Win/Win

From: Civilian Employee
Sent: August 05, 2010
To: Contractor
Subject: Win/Win

I have a win/win proposition for you to consider. As you expand you will need more trained experts to review insurance policies and assist [] with claims. My wife recently lost her job and I think she would be a natural in this role. Pls see her attached resume.

You could subcontract for her to review policies on a piecemeal basis (a set fee per policy she reviews). Policies would be sent electronically and she could deal with student issues over the phone. If needed her DC location allows for easy access to [DoD and Other Service] schools. There would be no guarantee that you will send her anything (e.g. no contractual commitment on your part). She needs no benefits and would be willing to come up to [City] for a few weeks of OJT training at no cost to you. She would take care of paying all her taxes and social security. In essence she would not be one of your employees as you will only be subcontracting her services.

If you are interested in this I will clear it with our lawyers and get you a written opinion specifying there is no conflict of interest for [contractor]. In addition she can use her maiden name in all communication with [the Government organization].

Minor children

An organization in which the employee serves as officer, etc.

Examples

- Girl/Boy Scout Council
- President of the local AUSA chapter
- American Society of Military Comptrollers
- West Point Association of Graduates
- National Guard Association of the United States

An organization with whom the employee is negotiating

What Not To Do

- An Army Brigadier General participated personally and substantially as an advocate and approval authority in the effort to increase funding on a task order with a Government contractor even while actively seeking employment with that company.

- He also extended official travel time and claimed unauthorized travel expenses in order to go to job interviews and participate in other job seeking activities to the point of actually excusing himself from official meetings.

- He charged unauthorized personal phone calls to the Government and ordered subordinates to run personal errands for him, including picking up his dry cleaning, driving him to the barber shop, and putting the license plates on his personal car (also directing them to use an official Government vehicle for these purposes).

- The General's behavior violated the Joint Ethics Regulation because he used Federal personnel, equipment, and duty time to conduct personal business. His official participation in a particular matter on behalf of a company with which he was seeking employment violated conflict of interest law. His other activities amounted to misuse of Government resources (his subordinates' time and the Government car) and improper gift acceptance (due to a failure to reimburse subordinates for expenditures such as mileage used when performing his personal services).

Impartiality Rule in Performing Official Duties
5 C.F.R. 2635.502(b)(1)

- In addition to § 208, there is a regulation requiring you to go to your supervisor if certain personal relations would cause a reasonable person to question your impartiality
- Inform your Ethics Counselor, then we will evaluate

Impartiality Rule Relationships

- Personal Relationships
  - Members of household, relatives, friends
- Businesses /Organizations
  - Anyone with whom you have or seek a business, contractual, or other financial relationship
  - Organizations in which you are an active participant
- Employers
  - Any person for whom you have, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

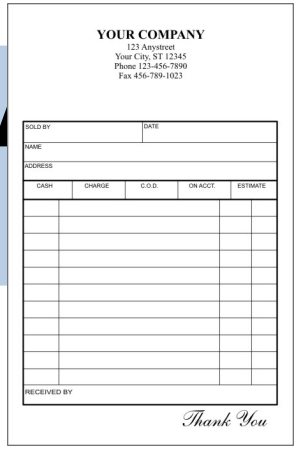
Resolution of a Conflict of Interest

- DO NOT Participate
  - -Disqualification Memo/ Re
- Reassignment
- Change of Duties
- Divestiture of the Financial Interest
- Regulatory Exemptions

Do NOT Misuse Public Office For Private Gain

- Not limited to your private gain
- You may not use your DoD position for personal gain or for the benefit of others (this includes family, friends, neighbors and individuals that you are affiliated with outside the government, to include non-profit organizations in which you are an officer or member).
- You may not solicit other Federal personnel for a personal activity while on duty.

Commercial Dealings involv DOD Employees


YOUR COMPANY
123 Anystreet
Your City, ST 12345
Phone 123-456-7890
Fax 456-789-1023

SOLD BY | DATE
NAME
ADDRESS
CASH | CHARGE | C.O.D. | ON ACCT. | ESTIMATE
RECEIVED BY
Thank You

General Rule

- A DOD employee shall not knowingly solicit or make solicited sales to DOD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty.
- Both the act of soliciting and the act of selling as a result of soliciting are prohibited.

JER 5-409, 2-205

Commercial Dealings involving DOD Employees (Cont'd)

- Prohibition includes, but is not limited to, the solicited sale of:
  - Insurance
  - Household supplies
  - Cosmetics
  - Girl Scout cookies
  - Other goods or services (gift wrapping paper, magazines, candy

Misuse of Public Office

- *Appearance of governmental sanction*
  - You may not use or permit the permit the use of your Government position or title or any authority associated with your public office in a manner that could reasonably be construed to imply that the Army or the Government sanctions or endorses your personal activities or those of another.
    - *E.g., Honorary Chair for fundraising activities*

Watch Out for Endorsements

- 5 C.F.R. § 2635.702(b) prohibits a Federal employee or officer from creating the appearance of Governmental sanction or endorsement of his or another's personal activities
  - Misuse of position/title
  - Misuse of official stationery

Misuse of Public Office

- *Endorsements*
  - You may not use or permit the use of your Government position or title or any authority associated with your public office to endorse any product, service or enterprise

atch Out for Letters Sent to Companies

Dear Mr. []:

"As a serving Army General Officer and career Cavalryman, I have been wearing Dehner boots for nearly 20 years and they are comfortable, durable, and frankly, just great!

The quality of Dehner boots and the high level of service that backs up each pair are consistent with the professionalism that we are so proud of in the United States Army. Keep up the great work!

Beware!

[Name M.D.]. Brigade Surgeon/Major General Medical Officer U.S. Army

"As an Army physician on deployment in Iraq, I have found your software invaluable at keeping my edge in the area of Advanced Cardiac Life Support. Currently I am also working on the Bioterrorism medical program, and plan to move on to the Neonatal Resuscitation, Critical Care, and Anesthesia programs as well.

Your software is both mentally stimulating and motivating. It instills confidence in core emergency medical skills applicable to military physicians. It is the best reality-based software that I could find, and well worth the investment.

The extra CME credit is really just a side benefit compared to the reality-based training that you provide. Great work on providing an invaluable, high speed product."

Rule on Contractor Performance

- The general rule is that an Army official may respond to a request for information about a DoD contractor received from another Federal agency.
  - On Past Performance
  - But, this means to another Federal agency, not the contractor

Preferential Treatment

- DoD employees in their official capacities and titles, positions, or organization names may not be used to suggest preferential treatment of any non-Federal entity except those listed in the Joint Ethics Regulation

Official Support To and Endorsement Of

- Combined Federal Campaign
- Army Emergency Relief
- By our own, For our own
  - Family Readiness Groups
  - Wounded Soldiers
  - Cup and Flower Fund

Army Conferences

- Army Directive 2011-05, Department of the Army Conferences, Symposia, Seminars and Meetings, Dated 20 April
- DA Memo 1-17, Conferences, Symposia, Seminars, and Meetings
- JTR/JFTR, Appendix R, Conferences

- SA Memo, dated 14 March 2011, Subject: Consideration of Costs in Army Decision-Making

Policy

- Conference Site Selection
  - Use Government or Military facilities (first choice)
  - Must maintain a record of the cost of each alternative conference site considered for each conference sponsored or funded, in whole or in part, for 30 or more attendees. A minimum of three sites must be considered for the conference and
    - The documentation must be available for inspection by the Inspector General‘s Office or other interested parties

Policy

- No acceptance of free space or services from non-Federal entities

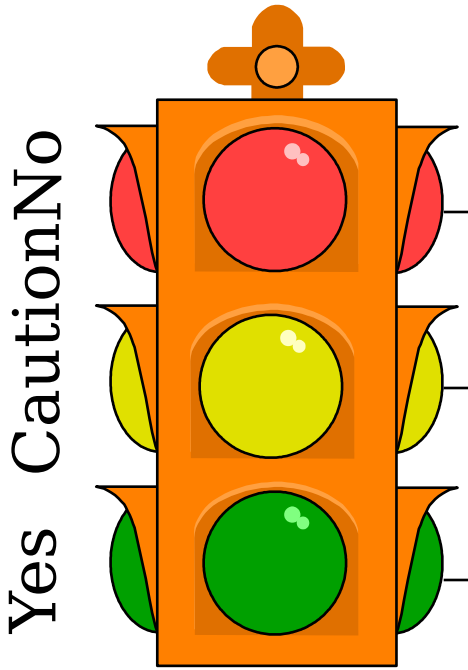
- Commercial facilities and meals
  - Only a warranted contracting officer or, when authorized, a Government purchase cardholder, may obligate
  - Support contractors MAY NOT enter into facilities contract on Army's behalf

- Government funded meals
  - Cannot exceed per diem rate, or if only one or two meals provided, cost plus PMR cannot exceed per diem rate
  - No refreshments

Use of Government Resources

- Government title or position
- Government personnel or contractors
- Supplies
- Equipment
- Computer Systems
- Government time
- Non-public informatio

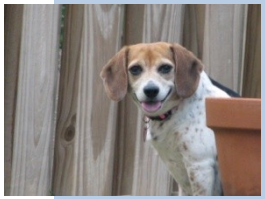
Types of Use Telecommunications



Prohibited Use: unrelated to mission
(no permission)

Authorized Use: supportive of mission
(with supervisor's permi

Official Use: directly related to an
necessary for accomplishin
the mission



Authorized Use Government Communications Equipment

e.g.

- Necessary to Government's best interest
- Personal communications in emergencies
- Approved personal communications when deployed
- Notify family of schedule change when on official travel

dditional Uses When Permitted

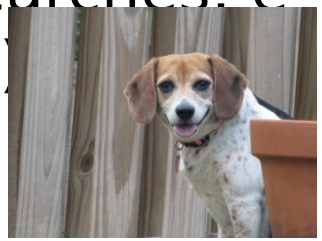
May permit personal use of government communications systems when all of the following apply –

- **No adverse effect on official duties**
- **Reasonable duration and frequency**
- **On personal time whenever possible**
- **Serve legitimate public interest**
- **No adverse reflection on Governmen**
- **Do not overburden communications**
- **No significant additional cost to DoD**
- **No long distance charge to Governm**

Hatch Act: Never – Partisan Political Activity

Use of Communication Systems

AR 25-1, 6-1e. Authorized uses of communication systems. Authorized use includes brief communications made by DOD employees while they are traveling on Government business to notify family members of transportation or schedule changes. They also include personal communications from the DOD employee's usual workplace that are most reasonably made while at the work place (such as checking in with spouse or minor children; scheduling doctor, auto, or home repair appointments; brief Internet searches; e-mailing directions to visiting relatives).



Use of Government Resources

Use of government resources in support of your outside commercial activities is **ALWAYS** prohibited.

(5 CFR 2635.704, 5 CFR 2635.705, JER 3

Prohibited Uses
JER, § 2-301a/AR 27-1

- Pornography
- Chain letters
- Unofficial advertising
- Solicitation or sales
- Conducting outside commercial activities
- Gambling
- Other inappropriate uses

Contractors in the Workplace

No No's

- **May not accept a gift from a contractor unless an exception applies**
- **May not give a contractor a letter of recommendation in one's official capacity – impermissible endorsement**
- **May not give a contractor an award**

Gifts

- General Rule: Cannot accept a gift based on your official position or from a prohibited source
- Exceptions to the general gift rule
  - $20/50 rule
  - Widely attended gatherin
  - No exception – no gift
  - Signers of the Ethics Pledge
    - Additional Restrictions

Gifts to a Government Employee From a Defense Contractor

- Earrings
- Flowers on numerous occasions
- Dinners
- Movies

Thumbs up

Personal Relationship

Misadventures in Ethics Gifts – How about Frequency

OIG investigation disclosed that about “1/3 of the entire staff socialized and received a wide array of gifts and gratuities from oil and gas companies with whom [the staff] were conducting official. While the dollar amount of the gifts and gratuities was not enormous, these employees accepted gifts with prodigious frequency. In particular, two [employees] received combined gifts and gratuities on at least 135 occasions. .

$20 per occasion/$50 per calendar year

Personal Friends

- Facebook friends are not necessarily “personal friends”
- Nor are people you “tweet with”

OGE's Perspective Contractors

Met All Bench-marks.

"Statements commending the performance of a contractor or a contractor's products generally are not permissible. . . The rule, however, permits a Government employee, who has authority over the contract to make a simple factual statement that the contractor's work satisfied the Government's requirements."

Awards

- Persons or organizations having a commercial or profit-making relationship with DoD shall not be granted recognition (DoD 1400.25-M, Subchapter 451)
- AR 672-20 prohibits award to contractors, to include Certificates of Appreciation
- DA policy also prohibits giving coins purchased with appropriated funds to contractor personnel (DA Memo 600-70, para. 5d(2)).

Who TO Call

- Mr. Brian Howell
  - Brian.howell3@conus.army.mil
  - 703-614-1166
- Ms. Sandra Stockel
  - Sandra.stockel@conus.army.mil
  - 703-693-3668
- Ms. Jane Gutcher
  - Jane.a.gutcher@conus.army.mil
  - 703-697-5105

Questions ???

Conflict of Interest Statutes

STATUTE	BRIEF SUMMARY
18 U.S.C. 201 Bribery	**Prohibits public officials from seeking, receiving or agreeing to accept anything of value for themselves or others in return for being influenced in an official act; being influenced to aid in the commission of a fraud on the United State; or being induced to do or omit any act in violation of official duty.**
18 U.S.C. 203 Representation	**Bars employees from seeking or accepting compensation for representing another before a Federal department, agency or court in matters where the U.S. is a party or has a substantial interest; or receiving money from anyone else's representation.**

Conflict of Interest Statutes

STATUTE	BRIEF SUMMARY
18 U.S.C. 205 Representation	Forbids employees from prosecuting or assisting in the prosecution of claims against the U.S.; or representing another before a Federal department, agency or court in matters where the U.S. is a party or has a substantial interest.
18 U.S.C. 207 Post-Gov Employment	Places certain restrictions on contacting the Federal government after leaving its employment.

Conflict of Interest Statutes

STATUTE	BRIEF SUMMARY
18 U.S.C. 208 Financial Conflict of Interest	**Bars an employee from participating personally and substantially in an official capacity in any particular Government matter that would have a direct and predictable effect on his own or his imputed financial interests.**
18 U.S.C. 209 Dual Compensation	**Prohibits employees from receiving any salary or contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government Employee.**

14 General Principles of Ethical Conduct

5 C.F.R. § 2635.101(b) -Principles of Ethical Conduct

The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

1. Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
2. Employees shall not hold financial interests that conflict with the conscientious performance of duty.
3. Employees shall not engage in financial transactions using non public Government information or allow the improper use of such information to further any private interest.
4. An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
5. Employees shall put forth honest effort in the performance of their duties.
6. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.
7. Employees shall not use public office for private gain.

14 General Principles of Ethical Conduct Continued:

8. Employees shall act impartially and not give preferential treatment to any private organization or individual.
9. Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.
10. Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.
11. Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.
12. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those--such as Federal, State, or local taxes--that are imposed by law.
13. Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.
14. Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

The principles of ethical conduct were issued by George H.W. Bush, in Executive Order 1267, as amended by Executive Order 12731. The principles were subsequently issued in the *Standards of Ethical Conduct for Employees of the Executive Branch* at 5 C.F.R. § 2635.101 (b). Each executive branch agency has a Designated Agency Ethics Officer responsible for oversight of the agency's ethics program.

U.S. Office of Government Ethics -www.usoge.gov